

1
2 EDMUND G. BROWN JR.
Attorney General of California
3 KAREN B. CHAPPELLE
Supervising Deputy Attorney General
4 M. TRAVIS PEERY
Deputy Attorney General
5 State Bar No. 261887
300 So. Spring Street, Suite 1702
6 Los Angeles, CA 90013
Telephone: (213) 897-0962
7 Facsimile: (213) 897-2804

8 *Attorneys for Complainant*

9 **BEFORE THE**
10 **BOARD OF REGISTERED NURSING**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation and Petition to
13 Revoke Probation Against:

14 **SCOTT ASHMENT CLOW**
9044 Navajo Trail
Morongo Valley, CA 92256

15
16 Registered Nurse License No. 756750

17
18 Respondent.

Case No. 2010-490

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., R.N (Complainant) brings this Accusation and Petition to
22 Revoke Probation solely in her official capacity as the Interim Executive Officer of the Board of
23 Registered Nursing, Department of Consumer Affairs.

24 2. On or about August 3, 2009, the Board of Registered Nursing (Board) issued
25 Registered Nurse License No. 756750 to Scott Ashment Clow (Respondent). The Registered
26 Nurse License was in full force and effect at all times relevant to the charges brought herein and
27 will expire on April 30, 2011, unless renewed.

28 ///

3. In a disciplinary action entitled "*In the Matter of the Statement of Issues Against Scott Ashment Clow*," Case No. 2008-330, the Board issued a Decision adopting the proposed decision of the administrative law judge, effective April 20, 2009, in which Respondent's application for licensure was granted. Upon issuance the license was immediately revoked, the order of revocation stayed, and Respondent was placed on probation for a period of three (3) years subject to certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

JURISDICTION

4. This Accusation and Petition to Revoke Probation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

STATUTORY PROVISIONS

5. Section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

6. Section 2761 states, in pertinent part, that:

“The Board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

“(a) Unprofessional conduct”

7. Section 2762 states, in pertinent part:

“In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

“(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use

1 impairs his or her ability to conduct with safety to the public the practice authorized by his or her
2 license.”

3 8. Section 2764 provides, in pertinent part, that the expiration of a license shall not
4 deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or
5 to render a decision imposing discipline on the license.

6 COST RECOVERY

7 9. Section 125.3 provides, in pertinent part, that the Board may request the
8 administrative law judge to direct a licensee found to have committed a violation or violations of
9 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
10 enforcement of the case.

11 CONTROLLED SUBSTANCES

12 10. “Methamphetamine” is a Schedule II controlled substance as defined in Health and
13 Safety Code section 11055, subdivision (d)(2), and is categorized as a dangerous drug pursuant to
14 section 4022.

15 ACCUSATION

16 FIRST CAUSE FOR DISCIPLINE

17 (Dangerous Use of a Controlled Substance)

18 11. Respondent is subject to disciplinary action under section 2761, subdivision (a), in
19 conjunction with section 2762, subdivision (b), in that,

20 a. Respondent used the controlled substance methamphetamine in a manner
21 dangerous to himself and others as documented by his positive test for the controlled substance
22 methamphetamine on or about October 29, 2009.

23 b. Respondent used the controlled substance methamphetamine in a manner
24 dangerous to himself and others as documented by his positive test for the controlled substance
25 methamphetamine on or about December 30, 2009.

26 ///

27 ///

28 ///

1 "Respondent, during the period of probation, shall submit or cause to be submitted such
2 written reports/declarations and verification of actions under penalty of perjury, as required by the
3 Board. These reports/declarations shall contain statements relative to respondent's compliance
4 with all the conditions of the Board's Probation Program. Respondent shall immediately execute
5 all release of information forms as may be required by the Board or its representatives."

6 16. Respondent's probation is subject to revocation because he failed to comply with
7 Probation Condition No. 5, referenced above, in that:

8 a. Respondent failed to submit a timely Data Report form that was due October 2,
9 2009.

10 b. Respondent failed to submit a Curriculum Vitae/Resume for approval of the
11 Physical Health examiner prior to an examination on October 2, 2009.

12 c. Respondent failed to submit a Curriculum Vitae/Resume for Physical Health
13 examiner due November 12, 2009.

14 **THIRD CAUSE TO REVOKE PROBATION**

15 **(Failure to Submit Approved Assessment of Respondent's Physical Condition)**

16 17. At all times after the effective date of Respondent's probation, Probation Condition
17 No. 13 stated, in pertinent part:

18 "Within 45 days of the effective date of this decision, respondent, at his expense, shall have
19 a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board
20 before the assessment is performed, submit an assessment of the respondent's physical condition
21 and capability to perform the duties of a registered nurse. Such an assessment shall be submitted
22 in a format acceptable to the Board."

23 18. Respondent's probation is subject to revocation because he failed to comply with
24 probation condition No. 13, referenced above, in that:

25 a. Respondent failed to obtain prior approval from the Board to have a physical
26 assessment from a licensed physician, nurse practitioner, or physician assistant.

27 ///

28 ///

1 b. Respondent failed to submit an approved physical health assessment by the due
2 date of October 1, 2009. The assessment was received on November 2, 2009. There was no
3 evidence the examiner possessed the required work experience in treating chemically dependent
4 patients. The examiner was not approved and the assessment was not acceptable.

5 **FOURTH CAUSE TO REVOKE PROBATION**

6 **(Failure to Participate in Treatment/Rehabilitation Program for Chemical Dependence)**

7 19. At all times after the effective date of Respondent's probation, Probation Condition
8 No. 14 stated:

9 "Respondent, at his expense, shall successfully complete during the probationary period or
10 shall have successfully completed prior to commencement of probation a Board-approved
11 treatment/rehabilitation program of at least six months duration. As required, reports shall be
12 submitted by the program on forms provided by the Board. If respondent has not completed a
13 Board-approved treatment/rehabilitation program prior to commencement of probation,
14 respondent, within 45 days from the effective date of the decision, shall be enrolled in a program.
15 If a program is not successfully completed within the first nine months of probation, the Board
16 shall consider respondent in violation of probation.

17 "Based on Board recommendation, each week respondent shall be required to attend at least
18 one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous,
19 Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board.
20 If a nurse support group is not available, an additional 12-step meeting or equivalent shall be
21 added. Respondent shall submit dated and signed documentation confirming such attendance to
22 the Board during the entire period of probation. Respondent shall continue with the recovery plan
23 recommended by the treatment/rehabilitation program or a licensed mental health examiner
24 and/or other ongoing recovery groups."

25 20. Respondent's probation is subject to revocation because he failed to comply with
26 probation condition No. 14, referenced above, in that:

- 27 a. Respondent failed to attend Nurse Support Group on November 16, 2009.
28 b. Respondent failed to attend Nurse Support Group on December 7, 2009.

1 c. Respondent failed to successfully complete, prior to commencement of
2 probation, a Board-approved treatment/rehabilitation program of at least six months duration.

3 d. Respondent failed to enroll in a Board-approved treatment/rehabilitation
4 program within 45 days from the effective date of the decision or as directed by the Board.
5 Respondent was instructed to enroll in a treatment/rehabilitation program no later than November
6 12, 2009. The Board received a Chemical Dependency Treatment Report indicating that
7 Respondent enrolled in Panorama Recovery Ranch on November 19, 2009.

8 e. Respondent failed to successfully complete a Board-approved program within
9 the first nine months of probation. On or about January 28, 2010 Respondent was terminated
10 from Panorama Recovery Ranch treatment/rehabilitation program for testing positive for
11 methamphetamine, lack of attendance, and being unable to comply with program requirements.

12 **FIFTH CAUSE TO REVOKE PROBATION**

13 **(Failure to Abstain from use of Psychotropic (Mood-Altering) Drugs)**

14 21. At all times after the effective date of Respondent's probation, Probation Condition
15 No. 15 stated:

16 "Respondent shall completely abstain from the possession, injection or consumption by any
17 route of all psychotropic (mood-altering) drugs, including alcohol, except when the same are
18 ordered by a health care professional legally authorized to do so as part of documented medical
19 treatment. Respondent shall have sent to the Board, in writing and within fourteen (14) days, by
20 the prescribing health professional, a report identifying the medication, dosage, the date the
21 medication was prescribed, the respondent's prognosis, the date the medication will no longer be
22 required, and the effect on the recovery plan, if appropriate.

23 "Respondent shall identify for the Board a single physician, nurse practitioner or physician
24 assistant who shall be aware of respondent's history of substance abuse and will coordinate and
25 monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-
26 altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report
27 to the Board on a quarterly basis respondent's compliance with this condition. If any substances
28

1 considered addictive have been prescribed, the report shall identify a program for the time limited
2 use of any such substances.

3 "The Board may require the single coordinating physician, nurse practitioner, or physician
4 assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive
5 medicine."

6 22. Respondent's probation is subject to revocation because he failed to comply with
7 Probation Condition No. 15, referenced above, in that:

8 a. On or about October 29, 2009, Respondent tested positive for
9 methamphetamine. The substance was not ordered by a health care professional.

10 b. On or about December 30, 2009, Respondent tested positive for
11 methamphetamine. The substance was not ordered by a health care professional.

12 **SIXTH CAUSE TO REVOKE PROBATION**

13 **(Confirmed Positive Finding by the Board's Testing Program)**

14 23. At all times after the effective date of Respondent's probation, Probation Condition
15 No. 16 stated:

16 "Respondent, at his expense, shall participate in a random, biological fluid testing or a drug
17 screening program which the Board approves. The length of time and frequency will be subject
18 to approval by the Board. The respondent is responsible for keeping the Board informed of
19 respondent's current telephone number at all times. Respondent shall also ensure that messages
20 may be left at the telephone number when he/she is not available and ensure that reports are
21 submitted directly by the testing agency to the Board, as directed. Any confirmed positive
22 finding shall be reported immediately to the Board by the program and the respondent shall be
23 considered in violation of probation.

24 "In addition, respondent, at any time during the period of probation, shall fully cooperate
25 with the Board or any of its representatives, and shall, when requested, submit to such tests and
26 samples as the Board or its representatives may require for the detection of alcohol, narcotics,
27 hypnotics, dangerous drugs, or other controlled substances.

28 ///

1 "If respondent has a positive drug screen for any substance not legally authorized and not
2 reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board
3 filed a petition to revoke probation or an accusation, the Board may suspend respondent from
4 practice pending the final decision on the petition to revoke probation or the accusation. This
5 period of suspension will not apply to the reduction of this probationary time period.

6 "If respondent fails to participate in a random, biological fluid testing or drug screening
7 program within the specified time frame, the respondent shall immediately cease practice and
8 shall not resume practice until notified by the Board. After taking into account documented
9 evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the
10 Board may suspend respondent from practice pending the final decision on the petition to revoke
11 probation or the accusation. This period of suspension will not apply to the reduction of this
12 probationary time period."

13 24. Respondent's probation is subject to revocation because he failed to comply with
14 Probation Condition No. 16, referenced above, in that:

15 a. Respondent received a confirmed positive finding by the Board's testing
16 program. Respondent tested positive for methamphetamine on October 29, 2009. The substance
17 is not legally authorized.

18 b. Respondent received a confirmed positive finding by Panorama Ranch
19 Outpatient. Respondent tested positive for methamphetamine on December 30, 2009. The
20 substance is not legally authorized.

21 c. Respondent failed to call First Lab automated random testing line on November
22 14, 2009.

23 d. Respondent failed to call First Lab automated random testing line on November
24 16, 2009.

25 e. Respondent failed to call First Lab automated random testing line on November
26 28, 2009.

27 f. Respondent failed to call First Lab automated random testing line on December
28 5, 2009.

- 1 g. Respondent failed to test on December 9, 2009.
- 2 h. Respondent failed to call First Lab automated random testing line on December
- 3 19, 2009
- 4 i. Respondent failed to call First Lab automated random testing line on December
- 5 20, 2009.
- 6 j. Respondent failed to maintain a clear account with First Lab and was
- 7 suspended from testing on December 23, 2009 through January 6, 2010.
- 8 k. Respondent failed to test on December 28, 2009. Respondent's failure to test
- 9 was a result of his failure to maintain a clear account with First Lab and being suspended from
- 10 testing at First Lab on December 23, 2009.
- 11 l. Respondent failed to test on January 4, 2010. Respondent's failure to test was a
- 12 result of his failure to maintain a clear account with First Lab and being suspended from testing at
- 13 First Lab on December 23, 2009.
- 14 m. Respondent failed to call First Lab automated random testing line on January
- 15 10, 2010.
- 16 n. Respondent failed to maintain a clear account with First Lab and was
- 17 suspended from testing on January 25, 2010.
- 18 o. Respondent failed to test on January 28, 2010. Respondent's failure to test was
- 19 a result of his failure to maintain a clear account with First Lab and being suspended from testing
- 20 at First Lab on January 25, 2010.
- 21 p. Respondent failed to test on February 8, 2010. Respondent's failure to test was
- 22 a result of his failure to maintain a clear account with First Lab and being suspended from testing
- 23 at First Lab on January 25, 2010.
- 24 q. Respondent failed to test on February 16, 2010. Respondent's failure to test
- 25 was a result of his failure to maintain a clear account with First Lab and being suspended from
- 26 testing at First Lab on January 25, 2010.

27 ///

28 ///

r. Respondent failed to test on March 24, 2010. Respondent's failure to test was a result of his failure to maintain a clear account with First Lab and being suspended from testing at First Lab on January 25, 2010.

s. Respondent failed to test on March 31, 2010. Respondent's failure to test was a result of his failure to maintain a clear account with First Lab and being suspended from testing at First Lab on January 25, 2010.

t. Respondent failed to test on April 2, 2010. Respondent's failure to test was a result of his failure to maintain a clear account with First Lab and being suspended from testing at First Lab on January 25, 2010.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking the probation that was granted by the Board of Registered Nursing in Case No. 2008-330 and imposing the disciplinary order that was stayed thereby revoking Registered Nurse License No. 756750, issued to Respondent;

2. Revoking or suspending Registered Nurse License No. 756750, issued to Respondent;

3. Ordering Respondent to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

4. Taking such other and further action as deemed necessary and proper.

DATED: 04/12/10

LOUISE R. BAILEY, M.Ed.,
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

LA2009604685
60526465.docx

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

SCOTT ASHMENT CLOW
9044 Navajo Trail
Morongo Valley, CA 92256

Case No. 2008-330

OAH No. 2008070457

Respondent.

RN 756750

DECISION

The attached proposed decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on APRIL 20, 2009.

IT IS SO ORDERED this 20th day of MARCH, 2009.

Susan Phillips, MSN, RN, FNP-BC
Board of Registered Nursing
Department of Consumer Affairs
State of California

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against:

Case No. 2008-330

SCOTT ASHMENT CLOW
9044 Navajo Trail
Morongo Valley, CA 92256

OAH No. 2008070457

Respondent.

PROPOSED DECISION

Stephen E. Hjelt, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on October 23, 2008, in Palm Springs, California.

Linda L. Sun, Deputy Attorney General, represented complainant Ruth Ann Terry, M.P.H, R.N., Executive Officer, Board of Registered Nursing, Department of Consumer Affairs, State of California (complainant or Board).

Respondent Scott Ashment Clow was present and represented by Edgardo Gonzalez, Attorney at Law, throughout the hearing.

The matter was submitted on October 23, 2008.

FACTUAL FINDINGS

Jurisdictional Matters

1. On January 30, 2008, respondent signed and thereafter filed with the Board an application for licensure. On April 9, 2008, the Board denied the application on the basis of multiple factors. These factors consisted of three criminal convictions and the previous revocation of respondent's license as a Licensed Vocational Nurse (LVN). The Board subsequently advised respondent that he could not sit for the licensing examination.

2. On June 16, 2008, the Statement of Issues was signed by complainant. On or about July 1, 2008, the Statement of Issues and other required jurisdictional documents were

served on respondent by certified mail. On or about August 4, 2008, complainant served on respondent a notice of hearing.

3. On October 23, 2008, the record was opened and jurisdictional documents were received. Sworn testimony was given, documentary evidence was introduced, and closing argument was presented. The matter was deemed submitted on October 23, 2008.

The February 4, 1997 Criminal Conviction

4. On or about February 4, 1997, in Case Number NMB03679 entitled *People of the State of California v. Scott Ashment Clow*, before the San Bernardino County Municipal Court, respondent was convicted upon his plea of nolo contendere of one count of violating Health and Safety Code section 11364 (possession of drug paraphernalia), a misdemeanor.

The November 7, 1997 Criminal Conviction

5. On or about November 7, 1997, in Case Number FMB02411 entitled *People of the State of California v. Scott Ashment Clow*, before the San Bernardino County Superior and Municipal Courts, respondent was convicted upon his plea of guilty of one count of violating Health and Safety Code section 1137, subdivision (a) (possession of controlled substance), a misdemeanor.

The March 25, 1998 Criminal Conviction

6. On or about March 25, 1998, in Case Number FMB02714, entitled *People of the State of California v. Scott Ashment Clow*, before the San Bernardino County Superior and Municipal Courts, respondent was convicted upon his plea of nolo contendere of one count of violating Penal Code section 273.5A (willful infliction of corporal injury), a misdemeanor.

7. Although alleged only as matters in aggravation, these are all convictions that are, by virtue of the facts and circumstances surrounding them, substantially related to the duties, functions and qualifications of a Board licensee.

The LVN Revocation

8. On or about October 23, 1992, the Board of Vocational Nursing and Psychiatric Examiners (the LVN Board) issued Vocational Nursing License No. VN 159475 to respondent. On March 19, 2004 the LVN Board revoked respondent's license.

9. The circumstances surrounding the revocation are as follows. On or about June 7, 2000, the LVN Board filed an Accusation against respondent charging him with violations of the laws and regulations pertaining to a licensed vocational nurse stemming from the three criminal convictions referenced above. Following an administrative hearing, respondent's LVN License was revoked, the revocations was stayed, he was suspended for five months and placed on probation for five years subject to various terms and conditions.

On or about May 20, 2003, the LVN Board filed a Petition to Revoke Probation against respondent for his non-compliance with several terms and conditions of probation. Following an administrative hearing, his LVN License was revoked effective March 19, 2004.

10. Of considerable concern for the Board of Registered Nursing was Factual Finding 7 by the Administrative Law Judge in the Proposed Decision dated December 18, 2003 and adopted by the Board to be effective on March 19, 2004. The finding stated, inter alia:

"Respondent's explanation for his failure to comply with the terms and conditions of probation was illogical, unintelligible and not completely credible . . . There is no evidence that he appreciates the reasons for the terms and conditions of probation, the obligations of the Board to protect the public from licensees who pose a potential risk of harm to the public or that he respects his obligation to comply with the Board's requirements. He offered no credible, reliable evidence to establish that if the period of probation were extended that he would fully comply with the Board's terms and conditions. Given the foregoing, it would be contrary to the public interest to allow respondent to retain his license as a vocational nurse at this time."

11. Based upon Factual Finding 10 above, respondent has a heavy burden to establish that he can be trusted with licensure in such a sensitive calling as nursing.

12. Respondent is 42 years old and lives in Morongo Valley, California with his life partner and their three children. Currently, he is employed remodeling houses. It is a skill he has had since high school. This employment was confirmed in a letter, received as administrative hearsay, from Jeff Anderson, co-owner of Homes Forever. Mr. Anderson wrote highly of respondent and references his industry and reliability over the last year and one-half.

13. Although not legally married to his partner, they live as husband and wife with their three children whose ages are 12, 9 and 8. His partner works for Office Max in Palm Desert as a clerk. The children attend the local Christian school. Both respondent and his partner are very active in the school and the church of which it is part.

14. Respondent graduated from Yucca Valley High School in 1984. He went into the Air Force and left, six years later, with an honorable discharge. In the Air Force he was an emergency medical technician (EMT). In 1992, he challenged the LVN exam in California and was successful. He was licensed in 1992, and did mostly registry work after licensure. He secured employment at ReadyLink Healthcare, a registry, in 1995, and worked continuously for them until he lost his LVN license in 2004.

15. He began an R.N. program at College of the Desert in 2004 and graduated with his A.A. degree in late 2006. The R.N. program at College of the Desert had both a clinical setting and a classroom setting. He did his clinical rotations at various hospitals in the Palm Springs and Indio area. He applied to take the R.N. boards and was denied the

BOARD OF
REGISTERED NURSING
SACRAMENTO

opportunity to sit for the test. When asked "why," he stated that the Board was concerned about protecting the public based upon his past. This was the first of numerous signs of recognition on respondent's part that he alone was responsible for the predicament he found himself in.

16. The Board of Registered Nursing properly investigated and properly filed the Statement of Issues herein as part of its statutory obligation to protect the public from impaired or potentially impaired practitioners. The Board was appropriately carrying out its duties in insisting that this matter proceed to a full evidentiary hearing on the Statement of Issues. Cases involving alcohol and drug abuse often require an opportunity to place respondents and other witnesses under oath and expose them to the rigors of cross examination. The Factual Findings, Legal Conclusions and Order could not have been properly made without the opportunity to assess the demeanor and the credibility of the respondent under oath. This is particularly the case when prior findings in previous administrative hearings concluded that respondent failed to appreciate his obligations as a health care licensee and the duty of the Board to protect the public.

17. Decisions made following a Statement of Issues hearing involve the exercise of discretion by the Administrative Law Judge sitting on behalf of a particular administrative agency. Under Government Code section 11424.50, subdivision (c), Factual Findings shall be based exclusively on the evidence of record and on matters officially noticed. Most importantly, "The presiding officer's experience, technical competence, and specialized knowledge may be used in evaluating evidence."

18. One of the recurring issues in disciplinary cases heard by the ALJs of the California Office of Administrative Hearings relates to substance abuse. The harm caused by alcohol and drug abuse is well documented and causes unnecessary social costs that run to the billions of dollars every year. These astronomical financial costs do not begin to cover the personal and human costs involved to families and communities from the harm caused by substance abuse. The potential for harm in the health care field from impaired practitioners is obvious. Agencies such as the Board of Registered Nursing or the California Medical Board must be ever vigilant in removing from practice those who pose immediate risk of harm to the public from their substance abuse. Furthermore, they must be careful to assess and evaluate those who in the past have had problems with drugs or alcohol, lest a prior problem resurface and place the public at risk.

19. Cause to impose discipline on respondent in the form of a denial has been established as a matter of law. However, another question must be asked. What level of formal administrative discipline is required to insure public protection. The Deputy Attorney General argues for a decision upholding the denial of the right to sit for the exam. On the basis of the full factual record and taking into consideration the administrative law judge's experience, technical competence and specialized knowledge accumulated over the past 19 years hearing these cases, the public would not be at risk from this practitioner if he were licensed and subject to terms and conditions of probation.

20. There are as many pathways to sobriety and maturity as there are to excuse and denial. Although Alcoholics Anonymous (AA) and Narcotics Anonymous (NA) provide a rigorous method by which some people get sober and grow up, it is not the only way for all people. What matters most is a mature acceptance of responsibility for one's actions and a recognition that alcohol and drug use is inconsistent with a successful life. Respondent does now exhibit such a mature understanding and recognition. It is foolish and misguided to view his criminal convictions and his license revocation as discrete and distinguishable events. They are, on the surface. However, they all are linked by a connection to drug use and a type of immaturity that comes with drug use. Respondent's life was chaotic and volatile. Even when he curtailed his drug use, he had very little insight into his demons and why he kept making foolish choices and exhibiting such poor judgment.

21. Some people are a quick study. They figure out things very quickly. They adapt and learn the lesson of a mistake without the need to re-experience it over and over again. At the other end of the spectrum is the small percentage of people who just cannot get out of their own way. In basic training in the Army, the drill sergeant would solemnly describe the two percent (2%) of recruits who "never got the message." There is a small percentage who would continue to stub their toe as long as they lived. This is troubling if you are such a person. Such a person has characterologic issues that are incompatible with holding a license in a sensitive health care environment such as a registered nurse.

22. Respondent is a slow learner. This has nothing to do with native intelligence. Respondent is more than bright enough to be a very good nurse. He is a slow learner in terms of coming to terms with his demons-his weaknesses, imperfections and failings. But, he is a learner and his testimony and that of others demonstrated that he has made some significant progress and growth. He is a work in progress but is no longer the clueless person without insight into why he was not fit to retain his LVN license.

23. Under all the circumstances, the opportunity to take the licensure exam and if successful, to have a properly conditioned probationary license, is an appropriate measure to take and one that is consistent with the Board's overriding mandate to insure public protection.

Respondent's Background, Rehabilitation, and Present Circumstances

24. Respondent has made a fairly dramatic turnaround in his life. He is to be commended for his efforts at putting his life in order. He has much negative history to overcome. His last conviction was in March 1998, 11 years ago. It was for domestic violence on his life partner. It at least indirectly involved drugs or the influence of drugs. It was this conviction that became the turning point for respondent. The light bulb did not instantly go on. It happened gradually over a period of 52 weeks as he took the criminal court mandated domestic violence course. This course was completed in February 2001. As a result of that criminal conviction he also served straight jail time for a year of weekends, as well as attended NA and AA classes and submitted to random drug tests.

RECEIVED
2009 JAN 30 AM 11:54

25. The domestic violence course changed his life. In his own words, "it opened my eyes to a lot about myself." There is no question that respondent struggled with issues of self esteem and he raged and kept his anger in, only to have it explosively erupt especially when he was using drugs. Gradually, he began to connect the dots and learn about himself, the triggers for anger and how conflict harmed his family. Most importantly, and once again in his own words . . . "I learned to be OK with me."

26. Respondent is embarrassed and ashamed of his past transgressions. He now exhibits a mature appreciation of what is required of him to be among the family of health care licensees. But, this level of maturity did not happen overnight. He had to experience the final shame of losing his license before he began to finally glimpse the big picture. In keeping with slow learners, he needed to experience the ultimate shame of losing his right to work in the profession that he loved before the big picture began to make sense to him.

27. Respondent seems to have a sound understanding of the paramount need of the Board to protect the public, as well as an appreciation of the severity of his non compliance with his probationary terms from the LVN Board. He is prepared to do whatever the Board demands in terms of probationary oversight. This is, finally, the right attitude. It is an attitude he expresses freely and sincerely. It took quite a while for him to get to this point.

28. Rehabilitation is not an event but rather a process. The opportunity at a second chance has long and deep roots in our culture and our law. We do not insist that people wear the scarlet letter for a lifetime. But the opportunity at a second chance does not come automatically, simply earned with the passage of time. Rather, we all must earn our second chance. This is the core of the notion of rehabilitation. Society takes it as a given that we all make mistakes, some larger than others. When our mistakes are social mistakes, breaches of the criminal law, for example, society imposes certain disabilities on us. We are penalized for our conduct by incarceration, fines, probation, community service, etc. Implicit in this set of disabilities imposed by society is a deeper truth. Society no longer trusts us completely. We have lost, at least temporarily, the trust of the community that we can do the tasks of citizenship without some oversight, some monitoring. Furthermore, depending on the legal breach and depending on one's job, society may say that the breach is such that one can't be trusted to continue working in a particular area. The legal breach is inconsistent with the particular type of work one is engaged in.

29. Rehabilitation is a process by which an individual earns back the trust of the community. It is composed of two very different modes of change. The first is attitudinal and involves the demonstration of a change of mind and heart. The second involves changes in behavior. To establish the change of mind and heart, one must come to terms with the underlying misconduct. One must demonstrate an awareness and understanding that it was wrong and that it was harmful. One must accept responsibility for the actions, not blaming it on others or excusing it. One must, in a word, show remorse. To establish a change in behavior, one must demonstrate a track record of consistently appropriate behavior over an extended period of time. In this way, society has the benefit of making a considered judgment with sufficient evidence.

30. There is no specific formula to establish rehabilitation, although the Board of Registered Nursing has established regulations that give guidance to potential licensees as well as to Administrative Law Judges who sit and hear cases on behalf of the Board. Each case must be evaluated on its own unique set of factors. The Board is charged with licensing and regulating a type of health care endeavor that carries with it the potential for great good and great harm. Nurses care for the ill and the infirm, by definition people who are needy and vulnerable. For this reason alone, the Board must scrupulously evaluate all such claims for licensure with an eye toward its paramount duty of public protection but at the same time acknowledging individual due process rights and the strong public policy in giving deserving people a second chance.

31. In this case, respondent has made substantial progress on his rehabilitative journey. He exhibits the demeanor of a man who has finally figured out the basic elements required to be a competent adult. He has a passion for health care. His dream is to be an emergency helicopter nurse, which is what he did in the Air Force. He wants to prove to the Board, while on probation, that he can be a safe and trusted care-giver. His testimony, and that of others, established that he is sincere in making substantial efforts at turning his life into a productive, law abiding citizen.

Evaluation

32. Respondent's convictions are quite old. None of them, in isolation, would be disqualifying for licensure. However, the convictions and his license revocation must be viewed as part of the same fabric of dysfunction. They gave the Board every reason to force him to this hearing.

33. Respondent testified and established that he is a very changed person. He speaks of hoping to have the privilege to be a registered nurse. These are sincere words. He does not have everything figured out but he feels he now has the tools to deal with life's challenges. One of the phrases that he learned in his domestic violence course is "get your tools out." Both he and his life partner have worked hard together to develop the skills necessary to deal with their family and work challenges. After losing his LVN license, he was ashamed and sad. As he looks back, he candidly admits that he deserved to lose it. He accepts that he is responsible for the long uphill battle to clean up the wreckage that he has caused in the past.

34. Although there does not appear to be any current use of illicit substances by respondent or his partner, it makes sense, based on his prior history, to have respondent attend recovery meetings and submit to random drug screens while he is on probation.

LEGAL CONCLUSIONS

The Burden and Standard of Proof

1. In the absence of a statute to the contrary, the burden of proof is on the applicant for a license or permit. (*Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1224-1225; *Southern California Jockey Club, Inc. v. California Horse Racing Board* (1950) 36 Cal.2d 167, 177.) The burden of proof in this matter is thus on respondent.

2. In the absence of a statute to the contrary, the standard of proof is a preponderance of the evidence. (Evid. Code, § 115.) Since no statute prescribing a contrary standard of proof has been found, the preponderance of the evidence standard applies to this proceeding.

"The phrase 'preponderance of evidence' is usually defined in terms of probability of truth, e.g., 'such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth.' (BAJI (8th ed.), No. 2.60.)" (1 Witkin, Evidence, *Burden of Proof and Presumptions* § 35 (4th ed 2000).)

Applicable Statutes

3. Business and Professions Code section 480 provides in pertinent part:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

* * *

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made."

4. Business and Professions Code section 492 provides in pertinent part:

"Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and

drug problem assessment program under Article 5 (commencing with Section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest."

5. Business and Professions Code section 493 provides as follows:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'"

6. Business and Professions Code section 2761 provides in pertinent part:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

4. Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.

* * *

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof."

RECEIVED

7. Business and Professions Code section 2736 provides in pertinent part:

"(a) An applicant for licensure as a registered nurse shall comply with each of the following:

* * *

(3) Not be subject to denial of licensure under Section 480."

Applicable Regulations

8. Title 16, California Code of Regulations, section 1445, provides in pertinent part:

"(a) When considering the denial of a license under Section 480 of the Code, the board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant."

Board Disciplinary Guidelines

9. The Board has adopted "Recommended Guidelines for Disciplinary Orders and Conditions of Probation," last revised in October 2002, effective May 24, 2003. The Guidelines provide in pertinent part:

Introduction

* * *

"The Board carefully considers the totality of the facts and circumstances in each individual case, with the safety of the public being paramount. Consequently,

the Board requests that the Administrative Law Judge clearly delineate the factual basis for his/her decision. This is especially important should the ALJ deviate from the recommended guidelines. The rationale for the deviation should be reflected in the decision to enable the Board to understand the reasons therefore and to evaluate the appropriateness of the decision.

* * *

Factors to Be Considered

In determining whether revocation, suspension or probation is to be imposed in a given case,¹ factors such as the following should be considered:

1. Nature and severity of the act(s), offenses, or crime(s) under consideration.
2. Actual or potential harm to the public.
3. Actual or potential harm to any patient.
4. Prior disciplinary record.
5. Number and/or variety of current violations.
6. Mitigation evidence.
7. Rehabilitation evidence.
8. In case of a criminal conviction, compliance with conditions of sentence and/or court-ordered probation.
9. Overall criminal record.
10. Time passed since the act(s) or offense(s) occurred.
11. If applicable, evidence of expungment proceedings pursuant to Penal Code Section 1203.4.

* * *

¹ This language suggests that the guidelines are intended to apply to licensees. The guidelines do not for the most part specifically address whether they apply to license applicants. Since the primary policy interest underlying the guidelines is the safety of the public, and since that interest would seem also to be implicated in cases involving license applicants, the guidelines are deemed generally applicable, at least by analogy, to this proceeding.

Drug/Alcohol Rehabilitation Criteria

Criteria to be considered in determining rehabilitation for abuse of alcohol or other drug related offenses include, but are not limited to:

Successful completion of drug/alcohol treatment program (a minimum of six (6) months duration). The treatment program may be a combined in-patient/out-patient and aftercare. Such a program will include at least the following elements:

- Chemical-free treatment philosophy
- Individual and/or group counseling
- Random, documented biological fluid screening
- Participation in nurse (or other professionals') support group(s)
- Education about addictive disease
- Adherence to a 12-step recovery program philosophy, or equivalent
- Written documentation of participation in 12-step recovery groups, or equivalent

* * *

Mitigation Evidence

The respondent is permitted to present mitigating circumstances at a hearing. The same opportunity is provided in the settlement process.

The following documents are examples of appropriate evidence the respondent may submit to demonstrate his or her rehabilitative efforts and nursing competency:

- A) Recent, dated written statements from persons in positions of authority who have on-the-job knowledge of the respondent's current nursing competence. Each statement should include the period of time and capacity in which the person worked with the respondent and should contain the following sentence at the end: "I declare, under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct." It should be signed by the one making the statement and dated.
- B) Recent, dated letters from counselors regarding respondent's participation in a rehabilitation or recovery program, where appropriate. These should include a description of the program, the number of sessions the respondent has attended, the counselor's diagnosis of respondent's condition and current state of rehabilitation (or improvement), the counselor's basis for determining improvement, and the credentials of the counselor.

- C) Recent, dated letters describing respondent's participation in support groups, e.g., Alcoholics Anonymous, Narcotics Anonymous, Nurse Support Groups, etc., where appropriate, and sobriety date.
- D) Recent, dated laboratory analyses or drug screen reports, where appropriate.
- E) Recent, dated performance evaluation(s) from respondent's employer.
- F) Recent, dated physical examination or assessment report by a licensed physician, nurse practitioner, or physician assistant.
- G) Certificates or transcripts of courses related to nursing which respondent may have completed since the date of the violation. An RN whose license has been revoked does not have an RN license and therefore cannot use his or her former license number to obtain continuing education credit/hours or for any other purpose. However, he or she may take continuing education courses so long as an RN license is not used."

Conditions of Probation and Rationale

The Board's primary responsibility is consumer protection. The Board believes that in disciplinary matters where probation has been imposed, conditions should be established to provide for consumer protection and to allow the probationer to demonstrate rehabilitation.

* * *

PROBATIONARY TERM

Generally, the Board recommends a minimum of three (3) years probation.

PROBATIONARY CONDITIONS

Probationary conditions are divided into two categories:

- A. Standard conditions that appear in all probation orders; and
- B. Optional conditions that are appropriate to the nature and circumstances of the particular violation. . . .

Listing of Probation Conditions

STANDARD PROBATION CONDITIONS

Introductory Language and Conditions 1-13 are required as follows:

- 1) Obey all Laws
- 2) Comply with Board's Probation Program
- 3) Report in Person
- 4) Residency or Practice Outside of State
- 5) Submit Written Reports
- 6) Function as a Registered Nurse
- 7) Employment Approval and Reporting Requirements
- 8) Supervision
- 9) Employment Limitations
- 10) Complete a Nursing Course(s)
- 11) Cost Recovery (Does not apply to Applicants)
- 12) Violation of Probation
- 13) License Surrender

OPTIONAL PROBATION CONDITIONS

Conditions 14-19 are usually required (in addition to the standard conditions 1-13) if the offense involves alcohol/drug abuse. In cases of mental illness conditions 14, 18, and 19 are recommended. Any of these optional conditions may be included if relevant to the violation.

- 14) Physical Examination
- 15) Participate in Treatment/Rehabilitation Program for Chemical Dependence
- 16) Abstain From Use of Psychotropic (Mood-Altering) Drugs
- 17) Submit to Tests and Samples
- 18) Mental Health Examination

19) Therapy or Counseling Program

20) Actual Suspension of License."

(Guidelines, pp. 2-3, 15-18.)

Analysis

10. The foregoing authority may be summarized as follows in the context of the facts found above in this proceeding:

a. The Board may deny an application for licensure if the applicant has been convicted of a felony or any offense that is substantially related to the qualifications, functions or duties of a registered nurse. (Bus. & Prof. Code, §§ 480, subd. (a)(1), 2736, subd. (a)(3), 2761, subd. (f), and 2762, subd. (c)), or where the applicant has had an allied health care license revoked by another California state licensing board. (Bus. & Prof. Code, § 2761, subd. (a)(4).)

b. An offense is substantially related to the qualifications, functions, or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Substantially-related offenses include those involving the illegal use of drugs. (Cal. Code Regs., tit. 16, § 1444 and the Board's Guidelines).²

c. Whether an applicant has been rehabilitated depends on a number of factors, including the nature and severity of the acts or crimes in question, the passage of time since the occurrence of the acts or crimes, whether the applicant has successfully completed any period of probation, and evidence of rehabilitation submitted by the applicant. (Cal. Code Regs., tit. 16, § 1445.)

d. The paramount consideration with regard to whether an applicant should be denied a license is public safety. (Guidelines, p. 2.)

11. The following matters constitute evidence that respondent has been rehabilitated and is presently fit to practice in a manner consistent with the public health, safety, and welfare:

- Respondent's testimony, including: (a) His testimony that he has been sober since 2003; (b) his testimony concerning his journey to sobriety and control over his anger; and (c) the sincerity reflected in his testimony.

² Because the Guidelines prescribe terms of probation in cases involving drug offenses, it must be inferred that the Board considers drug offenses to be substantially related. Even apart from the Guidelines, it is unquestionably the case that drug offenses, since they involve conduct that "evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare," are substantially related.

RECEIVED

The testimony of respondent's life partner, including her testimony: (a) that respondent no longer uses drugs and is a very changed person; (b) concerning the high regard others hold respondent; and (c) concerning respondent's care for their children and his involvement in the church and school.

BOARD OF
REGISTERED NURSING
SACRAMENTO

- The testimony of others who know him and have had the opportunity to observe him both professionally and with his family.
- That respondent no longer has contact with individuals who use drugs.
- Respondent's testimony that he takes full responsibility for the poor choices he made and the life to which those choices led him.
- Respondent's expressed willingness to submit to whatever probationary terms the Board may wish to impose in connection with the granting of a license.

12. On the basis of Factual Findings 1 through 32, and Legal Conclusions 1 through 13, it is concluded that:

a. Respondent has been convicted of three criminal offenses that are substantially related to the qualifications, functions and duties of a registered nurse. Accordingly, the Board is legally authorized to deny respondent's application for licensure as a registered nurse.

b. Respondent has met his burden of establishing that he has been rehabilitated to such an extent that to grant him a probationary license would be consistent with the public health, safety, and welfare.

13. By reason of Factual Findings 1 through 32, and Legal Conclusions 1 through 12, cause exists to grant respondent's application for licensure, on a probationary basis, with appropriate conditions of probation.

Accordingly, there is hereby issued the following:

ORDER

Pursuant to Legal Conclusions 1 through 13:

The application of respondent Scott Ashment Clow for licensure is hereby granted. Upon successful completion of the licensure examination and all other licensing requirements, a license shall be issued to respondent. Said license shall immediately be revoked, the order of revocation stayed and respondent placed on probation for a period of three years on the following conditions:

SEVERABILITY CLAUSE Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

(1) OBEY ALL LAWS Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

CRIMINAL COURT ORDERS: If respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

(2) COMPLY WITH THE BOARD'S PROBATION PROGRAM Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

(3) REPORT IN PERSON Respondent, during the period of probation, shall appear in person at interviews/ meetings as directed by the Board or its designated representatives.

(4) RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when he or she resides outside of California. The respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where he or she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if he/she applies for or obtains a new nursing license during the term of probation.

(5) SUBMIT WRITTEN REPORTS Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports/declarations shall contain statements relative to respondent's compliance with all the conditions of the Board's

Probation Program: Respondent shall immediately execute all release of information forms as may be required by the Board and its representatives.

Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which he or she has a registered nurse license.

(6) FUNCTION AS A REGISTERED NURSE Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for six consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for six consecutive months or as determined by the Board.

If respondent has not complied with this condition during the probationary term, and the respondent has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the respondent's probation period up to one year without further hearing in order to comply with this condition. During the one-year extension, all original conditions of probation shall apply.

(7) EMPLOYMENT APPROVAL AND REPORTING REQUIREMENTS Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this decision to her employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, respondent shall notify the Board in writing within seventy-two (72) hours after he or she obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after he or she is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

(8) SUPERVISION Respondent shall obtain prior approval from the Board regarding respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

(a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

(b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours respondent works.

(c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with respondent at least twice during each shift worked.

(d) Home Health Care - If respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by the respondent with or without respondent present.

(9) EMPLOYMENT LIMITATIONS Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

(1)

If the respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

RECEIVED
2009 JAN 30 AM 11:54
BOARD OF
NURSING

(10) COMPLETION OF COURSE(S) Respondent, at his own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of his probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to respondent after photocopying them for its records.

(11) VIOLATION OF PROBATION If a respondent violates the conditions of her probation, the Board after giving the respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of the respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

(12) LICENSE SURRENDER During respondent's term of probation, if he or she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, respondent may surrender her license to the Board. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, respondent will no longer be subject to the conditions of probation.

Surrender of respondent's license shall be considered a disciplinary action and shall become a part of respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

- 1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or
- 2) One year for a license surrendered for a mental or physical illness.

(13) PHYSICAL EXAMINATION Within 45 days of the effective date of this decision, respondent, at his expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of the respondent's physical condition and capability to perform the duties of a registered nurse. Such an assessment shall be submitted in a format acceptable to the Board.

If medically determined, a recommended treatment program will be instituted and followed by the respondent with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the Board and respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and shall not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required until the Board has notified respondent that a medical determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If the respondent fails to have the above assessment submitted to the Board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

(14) PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE Respondent, at his expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program on forms provided by the Board. If respondent has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, respondent, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the Board shall consider respondent in violation of probation.

Based on Board recommendation, each week respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

(15) ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are

RECEIVED
JAN 26 AM 11:51
BOARD OF
REGISTERED PROFESSIONALS

ordered by a health care professional legally authorized to do so as part of documented medical treatment, respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, the respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of respondent's history of substance abuse and will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

(16) SUBMIT TO TESTS AND SAMPLES Respondent, at her expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. The respondent is responsible for keeping the Board informed of respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when he/she is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and the respondent shall be considered in violation of probation.

In addition, respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

If respondent fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, the respondent shall immediately cease practice and shall not resume practice until notified by the Board. After taking into account documented evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may suspend respondent from practice pending the final decision on the petition to

revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

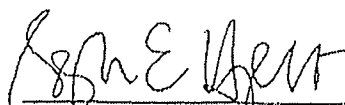
(17) MENTAL HEALTH EXAMINATION Respondent shall, within 45 days of the effective date of this decision, have a mental health examination including psychological testing as appropriate to determine her capability to perform the duties of a registered nurse. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of the respondent. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by the respondent.

If respondent is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Board and respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and may not resume practice until notified by the Board. During this period of suspension, respondent shall not engage in any practice for which a license issued by the Board is required, until the Board has notified respondent that a mental health determination permits respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If the respondent fails to have the above assessment submitted to the Board within the 45-day requirement, respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

(18) RESTORATION OF LICENSE Upon successful completion of probation, respondent's license shall be fully restored.

DATED: 1-28-09



STEPHEN E. HJELT

Administrative Law Judge

Office of Administrative Hearings

1 EDMUND G. BROWN JR., Attorney General
of the State of California

2 GLORIA A. BARRIOS

Supervising Deputy Attorney General

3 LINDA L. SUN, State Bar No. 207108

Deputy Attorney General

4 300 So. Spring Street, Suite 1702

Los Angeles, CA 90013

5 Telephone: (213) 897-6375

Facsimile: (213) 897-2804

6 Attorneys for Complainant

7
8 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
9 **STATE OF CALIFORNIA**

10 In the Matter of the Statement of Issues Against:

Case No. 2008-330

11 **SCOTT ASHMENT CLOW**

12 9044 Navajo Trail

13 Morongo Valley, CA 92256

STATEMENT OF ISSUES

14 Registered Nurse License Application

15 Respondent/Applicant.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Ruth Ann Terry, M.P.H, R.N. (Complainant) brings this Statement of
20 Issues solely in her official capacity as the Executive Officer of the Board of Registered Nursing
21 (Board), Department of Consumer Affairs, State of California.

22 2. On or about February 4, 2008, the Board of Registered Nursing received
23 an application for a Registered Nurse License Application from Scott Ashment Clow
24 (Respondent). On or about January 30, 2008, Respondent certified under penalty of perjury to
25 the truthfulness of all statements, answers, and representations in the application. The Board
26 denied the application on April 9, 2008.

27 ///

28 ///

1 JURISDICTION

2 3. This Statement of Issues is brought before the Board under the authority of
3 the following laws. All section references are to the Business and Professions Code (Code)
4 unless otherwise indicated.

5 STATUTORY PROVISIONS

6 4. Section 2736 of the Code provides, in pertinent part, that the Board may
7 deny a license when it finds that the applicant has committed any acts constituting grounds for
8 denial of licensure under section 480 of that Code.

9 5. Section 2761 of the Code states:

10 "The board may take disciplinary action against a certified or licensed nurse or
11 deny an application for a certificate or license for any of the following:

12 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

13
14 "(4) Denial of licensure, revocation, suspension, restriction, or any other
15 disciplinary action against a health care professional license or certificate by another state or
16 territory of the United States, by any other government agency, or by another California health
17 care professional licensing board. A certified copy of the decision or judgment shall be
18 conclusive evidence of that action."

19 FIRST CAUSE FOR DENIAL

20 (Discipline by Another Agency)

21 6. Respondent's application is subject to denial under Code section 2761,
22 subdivision (a)(4), in that on March 19, 2004, Respondent's vocational nursing license was
23 revoked by the Board of Vocational Nursing and Psychiatric Examiners, State of California. The
24 circumstances are as follows:

25 a. On or about October 23, 1992, the Board of Vocational Nursing and
26 Psychiatric Examiners issued Vocational Nursing License No. VN 159475
27 to Respondent.

28 ///

1 b. On or about June 7, 2000, in Case No. 6228, the Executive Officer of
2 Board of Vocational Nursing and Psychiatric Examiners filed an
3 accusation against Respondent. The causes for discipline underlying the
4 accusation are as alleged in paragraph 7 below. Following an
5 administrative hearing, Respondent's vocational nursing license was
6 revoked. However, the revocation was stayed and he was placed on
7 suspension for five (5) months and probation for five (5) years under
8 certain terms and conditions. That Decision became effective on April 27,
9 2001 following a denial of Respondent's Petition for Reconsideration.

10 c. On or about May 20, 2003, in Case No. 6228, the Executive Officer of the
11 Board of Vocational Nursing and Psychiatric Examiners filed a petition to
12 revoke probation against Respondent for his non-compliance of several
13 probationary terms. Following an administration hearing, his vocational
14 nursing license was revoked effective March 19, 2007.

15 **FACTORS IN AGGRAVATION**

16 7. To determine the appropriate penalty, Complainant further alleges the
17 following:

18 a. On or about February 4, 1997, in Case No. MMB03679, entitled *People of*
19 *the State of California v. Scott Ashment Clow*, before the San Bernardino
20 Municipal Court, Respondent was convicted upon his plea of nolo
21 contendere of one count of violating Health and Safety Code section
22 11364 (possession of drug paraphernalia), a misdemeanor.

23 b. On or about November 7, 1997, in Case No. FMB02411, entitled *People*
24 *of the State of California v. Scott Ashment Clow*, before the San
25 Bernardino Superior and Municipal Court District, Respondent was
26 convicted upon his plea of guilty of one count of violating Health and
27 Safety Code section 11377(a) (possession of controlled substance), a
28 misdemeanor.

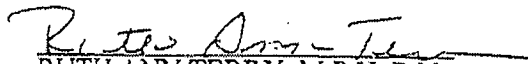
1 c. On or about March 25, 1998, in Case No. FMB02714, entitled *People of*
2 *the State of California v. Scott Ashment Clow*, before the San Bernardino
3 Superior and Municipal Court District, Respondent was convicted upon
4 his plea of nolo contendere of one count of violating Penal Code section
5 273.5A (willful infliction of corporal injury), a misdemeanor.

6 PRAYER

7 WHEREFORE, Complainant requests that a hearing be held on the matters herein
8 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- 9 1. Denying the application of Scott Ashment Clow for a Registered Nurse
10 License;
11 2. Taking such other and further action as deemed necessary and proper.
12

13 DATED: 6/16/08
14

15
16 
RUTH ANN TERRY, M.P.H., R.N.
17 Executive Officer
Board of Registered Nursing
18 State of California
Complainant
19

20 LA2008600835

21 ~6096037.wpd
22
23
24
25
26
27
28